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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LEOCO ROBERT FRASIER, Defendant and Appellant.	E048813 (Super.Ct.No. FVA900196) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Jon Ferguson, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carton and Elizabeth a. Hartwig, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Leoco Robert Frasier was found guilty of one count of possessing rock cocaine for purposes of sales for engaging in a hand-to-hand transaction observed by a police officer and subsequently being detained with nine rocks of cocaine in his jacket.

Defendant now claims as follows:

1. His *Wheeler*[1] motion was improperly denied by the trial court and requires reversal of the judgment.

2. Prosecutorial misconduct prejudiced him and requires reversal.

We affirm the judgment.

I

PROCEDURAL BACKGROUND

During trial, defendant admitted that he had suffered one prior serious or violent felony conviction (Pen. Code, §§ 667, subds. (b) through (i), 1170.12, subds. (a) through (d)) and had served a prior term of imprisonment (Pen. Code, § 667.5, subd. (b)). The jury found defendant guilty of possession of a controlled substance for sale. (Health and Saf. Code, § 11351.5.)[2]

Defendant was sentenced to the midterm of four years, doubled pursuant to the three strikes law, for a total of eight years in state prison. The trial court struck the prior prison term enhancement under Penal Code section 667.5, subdivision (b).

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[1] *People v. Wheeler* (1978) 22 Cal.3d 259 (*Wheeler*).

[2] Defendant had a previous trial but the jury was deadlocked. A charge of possession of marijuana for sale (Health and Saf. Code, § 11359) was dismissed prior to the second trial.

II

FACTUAL BACKGROUND

On January 29, 2009, at 1:20 p.m., Rialto Police Officer Cameron Nelson, who had extensive experience in street-level illegal drug transactions, was in full police uniform and was driving a marked black and white police car in the area of West Jackson and Willow Avenue in San Bernardino County, a known high drug-trafficking area. While looking down an alley near the intersection, he saw defendant, who was wearing jeans and a brown jacket. The brown jacket was distinctive based on its color and markings.

Officer Nelson observed defendant walk up to an individual in the alley and engage in what he believed to be a hand-to-hand drug transaction. Defendant then saw Officer Nelson and began to run. Officer Nelson gave chase to a nearby apartment complex.

Officer Nelson lost sight of defendant for about five seconds when he ran around a corner. As Officer Nelson went around the corner, he saw the brown jacket defendant had been wearing on the ground. He found defendant hiding near a doorway.

Defendant was searched, but nothing was found on his person. Inside a pocket of the brown jacket that had been thrown on the ground was a clear plastic baggie containing nine individually packaged rocks of cocaine. The nine rocks were analyzed and determined to be cocaine base, and the total weight of the nine rocks was 1.62 grams. Each was packaged in weights of .12 grams and up.

Rialto Police Department Corporal Paul Stella was an expert in narcotics transactions and had conducted numerous undercover drug buys and sales. A useable quantity of a controlled substance was .10 grams and up. The way the drugs were packaged was indicative of sales. In Corporal Stella's opinion, defendant possessed the nine rocks for purposes of sales.

Defendant testified that he was only visiting in the area and never engaged in a hand-to-hand drug transaction. Defendant did not have on a brown jacket. Officer Nelson found the brown jacket in the bushes nearby where he detained defendant.

III

BATSON/WHEELER MOTION[3]

Defendant contends that the trial court erred by failing to find a prima facie case of racial discrimination and for finding that two of the four African-American jurors the prosecutor dismissed were not for nonlegitimate, racially based reasons.

A. *Additional Factual Background*

1. *Juror No. 50*[4]

Juror No. 50 was a pharmacist and was single. When asked if he could be fair to both sides, Juror No. 50 expressed concern because he had seen too many people

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[3] *Batson v. Kentucky* (1986) 476 U.S. 79 [106 S.Ct.1712, 90 L.Ed.2d 69] (*Batson*).

[4] Defendant states that he only is contesting the reasons given by the prosecutor to exclude Juror Nos. 42 and 27. However, the facts pertaining to Juror Nos. 44 and 50 are relevant to the totality of the facts that give rise to an inference of discriminatory purpose.

wrongfully convicted. He would have a hard time ignoring his knowledge of chemistry. Juror No. 50's cousin had been convicted of a "similar type of offense," and he felt that his cousin was treated unfairly. Juror No. 50 would try to not rely on his past experiences and keep an open mind.

Juror No. 50 thought it was fair that the People had the burden of proof and that the People had to present evidence proving guilt. He felt that he could put aside any sympathy for defendant.

Juror No. 50 had grown up around crime, but it did not mean he was involved in crimes. He would run away sometimes from scenes of a crime because he was scared he would be considered to be involved.

Juror No. 50 thought there were more wrongful convictions than acquittals. He had lived in Compton and South Los Angeles County; he had worse experiences with police officers in those areas. He did not have problems with officers "in this area." Based on his experience, he would require the facts to be stronger. He did not believe that just because defendant was African-American he was wrongfully accused. He also thought it was "ridiculous" to ask whether one thought an officer was automatically telling the truth just because he was Caucasian. He did not judge a person as to whether they are telling the truth from their skin color. He would convict even if it was just a street-level drug case.

The People excused Juror No. 50.

2. *Juror No. 44*

Juror No. 44 was very brief in his responses: "Number 1, Rialto. Number 2, single. 3, I have a daughter that's 1. 4, design my own jewelry. 5 and 6, unemployed. 7, no. Number 8, I have a distant cousin that's a sheriff or was a sheriff. Number 9, yes. 10, no. 11, no. And 12, no." Juror No. 44 had both a cousin and an uncle who had been charged with similar crimes. He denied it would have any impact on the instant case and he would keep an open mind. He agreed it was fair that the People had the burden of proof. He could listen to the evidence before making a judgment and not sympathize with defendant.

Juror No. 44 would judge each witness by the same standard. He would not automatically find defendant guilty based on his appearance. Defendant did not fit the image of a drug dealer in court, but Juror No. 44 would not base his decision on that.

Juror No. 44 was not easily fooled. He did not think that defendant was wrongfully accused just because he was African-American. Juror No. 44 would convict even though it was a small, street-level drug case.

The People excused Juror No. 44.

3. *Juror No. 42*

Juror No. 42 lived in Rialto and was married. He worked for the United States Postal Service. His wife was a teacher, and they had no children. He had one law enforcement friend. Juror No. 42 was stopped by police several times while driving his

wife's 1966 Ford Mustang. The car attracted attention. He did not have any strong feelings about drugs.

Juror No. 42 had been in the military. His friends from the military who joined law enforcement were not more credible because of their positions. Juror No. 42 felt that the presumption of innocence was "a substantial right."

Juror No. 42, when asked if he was happy to be on jury duty, responded, "Yes and no." He had good common sense and was not easily fooled. He was willing to decide the case based on the facts and would try to ignore any personal feelings. He would not require a higher standard than beyond a reasonable doubt. He would not decide the case based upon how defendant looked in court. He was not afraid of conflict with other jurors; he would stick to the facts and follow the instructions.

Juror No. 42 was once pulled over for driving a suspected stolen car. He had been driving on the freeway when he noticed a police officer directly behind him on his bumper. By the time he pulled over, 20 policemen from various cars that had also been following him, got out of their car and drew their guns on him. It was later determined that the police made a mistake. He had no bias against law enforcement because of the incident. When asked if he thought it had to do with him being African-American and driving a nice car, he agreed there was probably an underlying theme of race when he was pulled over. He also indicated that he had been pulled over for running a red light once, but the officer had believed his explanation and had not given him a ticket.

When Juror No. 42 was asked if he believed that because defendant was African-American he was wrongfully accused, he responded, "It's a possibility," but he would not "assume" anything. He would follow the law even if he disagreed with it.

Juror No. 42 had been pulled over at least five times while living in Orange County. Since he moved to Riverside and San Bernardino Counties, he had not been pulled over. He would hold law enforcement to a higher standard than other witnesses because they were trained to enforce the law and to make sound judgments quickly. However, he would not require the investigation to be perfect.

The People excused Juror No. 42.

4. *First Wheeler motion*

After the People excused Juror Nos. 42, 44, and 50, defendant brought a *Wheeler* motion. Defendant stated that the People had excused three African-American jurors, and none were left in the jury box. The trial court noted that the People had exercised seven peremptory challenges against three African-American jurors, two Hispanic jurors, and two Caucasian jurors. The trial court stated, "I'm not sure under *Johnson versus California* · · · that a prima facie case has been made. In light of that case, it's a relatively low standard.[5] [¶] So [prosecutor], if you would like to offer an explanation for the record on those particular jurors." The prosecutor stated her reasons, as will be discussed in more detail, *post*.

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5 *Johnson v. California* (2005) 545 U.S. 162 [125 S.Ct. 2410, 162 L.Ed.2d 129].

After hearing the prosecutor's reasons, the trial court first reviewed the standard for *Batson/Wheeler* claims. The trial court then ruled, "Again, in light of the fact that there's been seven jurors excused so far of basically three different races, and the reasons given, they're all race-neutral explanations given by the prosecution. [¶] First of all, I guess I should rule. I'm not convinced that a prima facie case has been made. But nevertheless, I want to state essentially that the reasons advanced by the prosecutor -- I do find them to be credible explanations. I view them as race-neutral explanations. The Court has been able to hear the testimony or the answers given from each of those witnesses. [¶] . . . [Juror No. 42], who identified his own experiences of being pulled over at gunpoint by officers and kind of gave conflicting inform[ation] about his feelings of law enforcement. Again, a race-neutral explanation. [¶] So for those reasons, I do not find there is a basis to grant the motion at this time under *Batson.* At this time, the motion is denied." The trial court also noted that an African-American male had just been put in the jury box.

5. *Juror No. 27*

Juror No. 27 replaced Juror No. 42. Juror No. 27 was in the process of getting a divorce. He had one child and was retired. Juror No. 27 had no strong feelings about drugs, had no negative experiences with law enforcement officers, and agreed with the burden of proof properly being with the People. Juror No. 27's daughter was a probate lawyer, but he did not talk to her about her cases because he was not really interested in them.

Juror No. 27 had been subjected to racial prejudice when he had visited the "South." His experiences with racism in California were "[n]ot that much." Juror No. 27 explained that over 20 years prior he and his cousin were walking on the sidewalk and a Caucasian man yelled at them to get out of the way. Juror No. 27 had heard people say that a person of color was more likely to commit a crime than a Caucasian person. He did not think it was true and thought the stereotype was offensive.

Juror No. 27 was more concerned that an innocent man would go to jail than if a guilty man would go free because he thought of himself in that situation.

Juror No. 27 did not feel that police officers lie more often than they tell the truth. He did not automatically believe defendant was innocent or guilty because he was African-American. He could convict based on one witness, he had good common sense, and he could be fair and impartial.

The People excused Juror No. 27.

6. *Second Wheeler motion*

After Juror No. 27 was excused, defendant immediately brought a second *Wheeler* motion. Defendant complained that every African-American juror who got in the jury box had been excused by the prosecutor; four of her eight peremptories were against African-American males. Prior to asking for the prosecutor's reasons for removing Juror No. 27, the trial court stated, "After reviewing the factors in establishing prima facie previously, although I didn't put these on the record, I would note that previously there . . . was not a disproportionate number of peremptory challenges used against a

particular group. Certainly, there has been no engaging in cursory voir dire of any prospective jurors really by either side, but I do have to consider on the other side that all of the jurors of the particular race have been excused so far. [¶] Again, I think based on the totality of the circumstances, I do not find a prima facie case has been made in *Johnson versus California*. You previous[ly] indicated your reasons for excusing those jurors. As I indicated, you have reasons you did that. There was a record made of the prosecutor's reasons. As I indicated, I do find it genuinely credible and race-neutral." The trial court found that even having excused Juror No. 27, there was not a prima facie case made. Regardless, the prosecutor offered reasons for excluding Juror No. 27, as will be discussed in more detail, *post*; essentially the prosecutor expressed her concern that Juror No. 27 was more concerned that an innocent man would be found guilty than about setting a guilty man free.

The trial court noted that he was the only juror asked the question and that other jurors might answer the same if asked the question. It then ruled, "However, again, that is a race-neutral reason. I'm not prepared to say that is not a genuine concern. . . . Again, I do find that to be a genuine reason that he may be more reluctant, I suppose. He did say that in fairly quick reply. And under case law, even a trivial reason will suffice. It is group-neutral and genuine. I suppose if everybody answers that the same way, however, we may be in a different predicament. [¶] In any event, I do find that to be a valid reason at this point. [C]ertainly it doesn't change the Court's view about the other jurors that were previously excused. Certainly, at least two of the previously excused jurors had

stronger . . . stated reluctance. I think [Juror No. 50] and [Juror No. 42] had differing views of law enforcement. And [Juror No. 50] certainly . . . seemed quite tentative in his willingness to serve initially. [¶] So given that, in light of the fact that there [were] eight jurors overall that have been excused and four of them have been African-American, two Hispanics, and two Caucasians, I don't find that a systematic use of peremptories. Certainly, there's been no reason[] justifying a challenge of cause. Again, in totality of what has been presented, I don't find any reasons that have been stated that are not genuine."

Defendant responded that he thought that the response by Juror No. 27 was appropriate; in fact, it had once been made by Benjamin Franklin. The trial court acknowledged that it was a response he had heard before, but no matter how trivial the reason, it was race neutral. The prosecutor indicated that she was unaware of the history of the statement. The trial court believed it was a race-neutral reason and denied the motion.

B. *Analysis*

"Both the state and federal Constitutions prohibit the use of peremptory challenges to remove prospective jurors based solely on group bias. (*Batson* [*v. Kentucky* (1986)] 476 U.S. [79,] 89; [*People v.*] *Wheeler*, *supra*, 22 Cal.3d at pp. 276-277.)" (*People v. Thompson* (2010) 49 Cal.4th 79, 107.) "[T]he unconstitutional exclusion of even a single juror on improper grounds of racial or group bias requires . . . reversal of the judgment . . . . [Citations.]" (*People v. Reynoso* (2003) 31 Cal.4th 903, 927, fn. 8.)

"[A]n objection on the basis of *Wheeler* also preserves claims that may be made under *Batson*. [Citations.]" (*People v. Salcido* (2008) 44 Cal.4th 93, 136, fn. 7; accord, *People v. Yeoman* (2003) 31 Cal.4th 93, 117-118.)

"The law applicable to *Batson/Wheeler* claims is now familiar. 'First, the defendant must make out a prima facie case "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." [Citation.] Second, once the defendant has made out a prima facie case, the "burden shifts to the State to explain adequately the racial exclusion" by offering permissible race-neutral justifications for the strikes. [Citations.] Third, "[i]f a race-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination."' [Citation.]" (*People v. Thompson*, *supra*, 49 Cal.4th at p. 107.)

"'At the third stage of the *Batson/Wheeler* inquiry, "the issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." [Citation.] In assessing credibility, the court draws upon its contemporaneous observations of the voir dire. It may also rely on the court's own experiences as a lawyer and bench officer in the community, and even the common practices of the advocate and the office that employs him or her. [Citation.]'" (*People v. Mills* (2010) 48 Cal.4th 158, 174-175.)

"'Review of a trial court's denial of a *Batson/Wheeler* motion is deferential, examining only whether substantial evidence supports its conclusions.' [Citation.] 'We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court's ability to distinguish bona fide reasons from sham excuses.' [Citation.] As long as the court makes 'a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal.' [Citation.]" (*People v. Thompson*, *supra*, 49 Cal.4th at p. 107.)

1. *Prima facie case – Batson/Wheeler's first step*

Defendant contends that the trial court implicitly found a prima facie case had been made during its first denial of the *Batson/Wheeler* motion. Defendant also argues that the trial court's second finding that no prima facie case of discrimination had been made out was erroneous because all of the potential African-American male jurors had been dismissed and the prosecutor had used four of her eight peremptory challenges to excuse them.

"In establishing a prima facie showing, a defendant has the burden of demonstrating that the facts and circumstances of the case raise an inference that the prosecutor excluded prospective jurors based on race. [Citation.] In making such a showing, a defendant should make as complete a record of the circumstances as is feasible. [Citation.]" (*People v. Hawthorne* (2009) 46 Cal.4th 67, 79.) In deciding whether defendant established a prima facie case of discrimination, "we consider the entire record before the trial court." (*People v. Bonilla* (2007) 41 Cal.4th 313, 342.)

"Though proof of a prima facie case may be made from any information in the record available to the trial court, we have mentioned 'certain types of evidence that will be relevant for this purpose. Thus the party may show that his opponent has struck most or all of the members of the identified group from the venire, or has used a disproportionate number of his peremptories against the group. He may also demonstrate that the jurors in question share only this one characteristic -- their membership in the group - and that in all other respects they are as heterogeneous as the community as a whole. Next, the showing may be supplemented when appropriate by such circumstances as the failure of his opponent to engage these same jurors in more than desultory voir dire, or indeed to ask them any questions at all.'" (*People v. Bell* (2007) 40 Cal.4th 582, 597.)

At the time of the first *Batson/Wheeler* motion, the prosecutor had excused three African-American jurors, two Hispanic jurors, and two Caucasian jurors. This was not a case where the only jurors removed by the prosecutor were African-American. Further, there was at least one African-American male (Juror No. 27) remaining in the jury pool. At the time of the first *Batson/Wheeler* motion, defendant had not demonstrated that a prima facie case of discrimination had been shown.

At the time of defendant's second *Batson/Wheeler* motion, the record shows that the prosecutor had removed all of the African-American males from the jury box and that she had used half of her peremptory challenges to remove them. The record does not establish whether there were other African-American jurors remaining in the venire. The

totality of the evidence shows no discriminatory purpose, as each of the jurors had some experience (whether it was his or her own or that of a relative) with law enforcement. However, since the prosecutor gave her reasons for removing the jurors, we move to the second and third steps regardless of whether or not defendant established a prima facie case.

2. *Batson/Wheeler's second and third steps*

Defendant only contends that the reasons given for removing Jurors No. 27 and No. 42 were not race neutral, and the trial court erred by finding that defendant did not prove purposeful racial discrimination. We conclude that there was substantial evidence to support the trial court's ruling on the question of purposeful racial discrimination.

"A prosecutor asked to explain his conduct must provide a '"clear and reasonably specific" explanation of his "legitimate reasons" for exercising the challenges.' [Citation.] 'The justification need not support a challenge for *cause*, and even a "trivial" reason, if genuine and neutral, will suffice.' [Citation.] A prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons. [Citations.]" (*People v. Lenix* (2008) 44 Cal.4th 602, 613.) We review the ruling of the trial court on whether there purposeful racial discrimination for substantial evidence and give such finding deference. (*Ibid*.; *People v. McDermott* (2002) 28 Cal.4th 946, 971.)

The prosecutor stated the following reasons for excluding Juror No. 42: "As to Juror Number 42 [Juror No. 42], the last African-American juror that was excused, I

would state that the race neutral reason that that particular juror was excused is that he indicated on a couple of different occasions -- although he stated he could be fair and impartial -- that he had an experience with law enforcement where there were 20 officers that held him at gunpoint, and . . . I felt that that could bear on [Juror No. 42]'s evaluation in this case and evaluation of the officers as well." [¶] He also indicated that while living in Orange County, he was stopped numerous times by police officers and never in Riverside and never in San Bernardino County. In my estimation that probably was an assumption that in a particular county that he was being targeted by law enforcement due to his race and ethnicity and could potentially not be fair in this particular case."

Juror No. 42 repeatedly discussed his experience with law enforcement when he was pulled over for driving a suspected stolen car. Although Juror No. 42 stated that he had no resentment for being pulled over by mistake, the prosecutor did not have to believe him. Juror No. 42 had also discussed being pulled over numerous times in Orange County. The prosecutor reasonably could be concerned there was some negative feeling toward law enforcement. Thus, the prosecutor's reasons for excusing Juror No. 42 were both plausible and supported by the record. Substantial evidence supports the trial court's finding.

The prosecutor offered the following reasons for excusing Juror No. 27: "[W]hen I questioned him, although he tried to clean it up, he [believed it] was egregious for an

innocent man to go to jail as opposed for a guilty man to go free. The People believe that would bear on his ability to be . . . impartial . . . and fair in this particular case."

The reason for excusing Juror No. 27 was that he expressed that he was more concerned that an innocent man would be wrongfully convicted than he was about letting a guilty man go free. Although defendant may have considered this trivial, such immediate conclusion by Juror No. 27 could rightfully concern the prosecutor, who might infer that Juror No. 27 would rather let defendant go free if there was any question at all as to his guilt. The record supports the trial court's finding that the prosecutor challenged Juror No. 27 for legitimate, nondiscriminatory reasons.

Based on the foregoing, the prosecutor's stated reasons for removing Juror Nos. 42 and 27 were legitimate and nondiscriminatory, and there was substantial evidence that it was not pretextual. We therefore conclude that the trial court did not err by denying defendant's *Batson/Wheeler* motion.

IV

PROSCUTORIAL MISCONDUCT

Defendant complains that the prosecutor committed prejudicial misconduct by making the following statement at the beginning of her argument: "Now, I know that I don't have to tell you, members of the jury, about the devastating effect of drugs. I don't have to tell you that because you're familiar with that. I don't have to tell you how drugs take lives, how they destroy lives, how they rip apart families. I don't have to tell you that. You know that. I don't have to tell you how drugs take lives, how they make our

neighborhood and our schools dangerous, violent, and unsafe. You know this to be true. [¶] As I've stated to you time and time again during this trial, this case is not about a huge drug cartel or a drug ring. It is about one street pusher, the defendant in this case. The defendant . . . is a street pusher of drugs. He's a street pusher of cocaine base, and he's a liar. . . . [¶] . . . He was selling. He was selling his cocaine base, contaminating the streets of Rialto, street by street, apartment by apartment, block by block. The defendant is a liar. That's what the evidence has clearly shown, and he's a street pusher of drugs." There was no objection by defendant's counsel.

A prosecutor's conduct violates California law if it involves the use of deceptive or reprehensible methods to attempt to persuade the jury. (*People v. Benavides* (2005) 35 Cal.4th 69, 108.) A prosecutor's comments are misconduct under the United States Constitution "when it infects the trial with such unfairness as to make the conviction a denial of due process." (*People v. Morales* (2001) 25 Cal.4th 34, 44.) To establish prosecutorial misconduct, a defendant need not show that the prosecutor acted in bad faith, but he must show that his right to a fair trial was prejudiced. (*People v. Nguyen* (1995) 40 Cal.App.4th 28, 35.) "To preserve a misconduct claim for review on appeal, a defendant must make a timely objection and, unless an admonition would not have cured the harm, ask the trial court to admonish the jury to disregard the prosecutor's improper remarks or conduct. [Citation.]" (*People v. Martinez* (2010) 47 Cal.4th 911, 956.)

Defendant did not object to the prosecutor's comments. However, defendant claims that an objection to the argument would have been futile and that an admonition

would not have cured the harm; in the alternative, he received ineffective assistance of counsel due to his counsel's failure to object. In order to avoid a lengthy discussion of these issues, and the for the sake of judicial efficiency, we will the address the merits of defendant's prosecutorial misconduct claim.

We do not consider the prosecutor's comments reprehensible or deceptive. A prosecutor should not refer to facts not in evidence unless they are matters of common knowledge or drawn from common experience. (*People v. Hill* (1998) 17 Cal.4th 800, 819.) The prosecutor may generally comment on the danger to the community created by criminal conduct and remind the jury of its important role in the criminal justice system as long as he or she does not urge the jury to find the defendant guilty based on community sentiment or bias or as a means to "incite the jury against defendant." (*People v. Adanandus* (2007) 157 Cal.App.4th 496, 513.)

Here, it is common knowledge that drugs affect society. The prosecutor made her argument in the context of trying to persuade the jurors that this small drug case, rather than a large drug cartel case, was still important and deserving of a conviction. The prosecutor did not argue that the jurors should convict defendant based on the proliferation of drugs in the community. She did not commit misconduct by noting the ills of drugs in the community in order to impress upon the jury that this was a serious case worth their consideration.

Even if we were to consider the prosecutor's comments to be misconduct, we would not find it reversible. "Under the federal Constitution, a prosecutor commits

reversible misconduct only if the conduct infects the trial with such '"unfairness as to make the resulting conviction a denial of due process."' [Citation.] By contrast, our state law requires reversal when a prosecutor uses 'deceptive or reprehensible methods to persuade either the court or the jury' [citation] and '"it is reasonably probable that a result more favorable to the defendant would have been reached without the misconduct"' [citation]." (*People v. Davis* (2009) 46 Cal.4th 539, 612.)

We cannot conclude the prosecutor's comments so infected the trial as to require reversal. The jurors were admonished, "Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discussed the case, but their remarks are not evidence." Further, the trial court instructed the jury to "not let bias, sympathy, prejudice, or public opinion influence [its] decision." We presume the jurors followed the instructions and did not base their decision on a bias toward drugs. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1005.)

Moreover, the case against defendant was overwhelming. He was caught engaging in a hand-to-hand drug transaction and then ran from Officer Nelson. In his jacket, cocaine base packaged for sale was found. The only real question in the case was whether defendant had been wearing the brown jacket. The decision whether the jacket belonged to defendant was not influenced by the prosecutor's arguments regarding drugs in the community.

Based on the foregoing, even if the prosecutor committed misconduct, reversal is not required.

V

DISPOSITION

We affirm the judgment.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

McKINSTER
Acting P.J.

MILLER
J.